IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-277 AND 74-80

EDWIN H. HELFANT,

Petitioner,

vs.

GEORGE F. KUGLER, JR., Attorney General of the State of New Jersey, JOSEPH HAYDEN, JR., Deputy Attorney General of the State of New Jersey, CHIEF JUSTICE JOSEPH A. WEINTRAUB, ASSOCIATE JUSTICES NATHAN L. JACOBS, HAYDN PROCTOR, FREDERICK W. HALL, WORRALL F. MOUNTAIN, JR., and MARK A. SULLIVAN, of the Supreme Court of New Jersey, and THE STATE OF NEW JERSEY,

Respondents.

PETITION FOR REHEARING

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SUPREME COURT OF THE UNITED STATES

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GEORGE F. KUGLER, JR., Attorney General of the State of New Jersey, JOSEPH HAYDEN, JR., Deputy Attorney General of the State of New Jersey, CHIEF JUSTICE JOSEPH A. WEINTRAUB, ASSOCIATE JUSTICES NATHAN L. JACOBS, HAYDN PROCTOR, FREDERICK W. HALL, WORRALL F. MOUNTAIN, JR., and MARK A. SULLIVAN, of the Supreme Court of New Jersey, and THE STATE OF NEW JERSEY,

Respondents.

PETITION FOR REHEARING

On April 28, 1975, this Court issued its opinion in the case of *Kugler, Attorney General of New Jersey, et al v. Edwin Helfant*, unofficially reported at 43 U.S.L.W. 4487 (Apr. 29, 1975). Now, Petitioner Edwin H. Helfant, Respondent in No. 74-80, petitions this Honorable Court for rehearing. It is respectfully submitted that this Court erred in its analysis of those New Jersey Court Rules and Statutes dealing with the disqualification of a judge for bias and further erred in assuming Helfant could receive a fair trial in the State of New Jersey—for as is shown in the Addenda attached hereto—the entire New Jersey State Court System is prejudiced against his position and the

courts continue in their collusive, illegal activity with the State Attorney General's Office to the substantial detriment of petitioner's Constitutional rights, including the right to a fair trial.

This is amply demonstrated by the State's treament of John S. Cantoni, who was and continues to be an unindicted co-conspirator in the State indictments involving Helfant. Cantoni is one of the State's prime witnesses against Helfant. On March 27, 1972, Cantoni was convicted for conspiracy to distribute controlled dangerous substances, conspiracy to possess same and possession of controlled dangerous substances. He was sentenced, as modified by the Appellate Division of the New Jersey Superior Court, on September 26, 1973 to a term of 6 to 9 years in State's prison, consecutively with a sentence of 3 to 5 years in State's prison.

Cantoni appealed his conviction through the State courts as well as to the United States Supreme Court, which denied his Petition for Writ of Certiorari, No. 73-6916, on October 15, 1974. On December 17, 1974 Cantoni filed a Petition for Post-Conviction Relief with the Office of the Clerk of Atlantic County, New Jersey, the County where he was convicted. The Petition was filed under *R.* 3:2-21 of New Jersey Rules of Court. The Petition was denied on January 31, 1975, by the Assignment Judge hereinafter referred to.

Thereafter, the State Attorney General of New Jersey interceded on behalf of Cantoni in order to accelerate his release from prison. At the request of the Attorney General, the Assignment Judge of Atlantic County, Herbert Horn, held a hearing on March 10, 1975. At this time, questions of the propriety, and the ability of the court to hear the request of the Attorney General were brought

forth both by the Attorney General and the court itself (Addendum at A7-A8). The court on its own motion, regarded the Petition for Post-Conviction Relief, which had been previously filed and denied, at this time as a motion for reduction of sentence (Addendum at A10). No motion for reduction of sentence had ever formally been filed.

The Rule applicable in New Jersey to motions for reduction of sentence is *R.* 3:21-10. It reads in pertinent part:

> "A motion to reduce or change a sentence *shall* be filed not later than sixty days after the date of the Judgment of Conviction, or, if an appeal is taken within the sixty days, not later *than twenty days after* the date of the Judgment of the Appellate Court. The Court may reduce or change a sentence, either on motion or on its own initiative, by order entered within seventy-five days from the date of Judgment of Conviction, or if an appeal is taken within sixty days, within *thirty-five days of issuance* of the Judgment of the Appellate Court, and not thereafter. . . ." (Emphasis added.)

Cantoni's Petition for Certiorari was denied on October 15, 1974. Yet, the New Jersey court was willing to entertain his petition, though denied by it, and relabeled by it a "Motion for Reconsideration of Sentence" on March 10, 1975, over four months too late. Under *Rule* 1:3-4(c) neither the parties nor the court could enlarge the time specified under *R.* 3:21-10(a) for the bringing on of motions for correction or reduction of sentence.

Thus, the Assignment Judge of Cape May, Atlantic, Salem, and Cumberland Counties, who has plenary responsibility over twelve Judges, acted illegally in allowing

this "Motion" to be heard, and in acting on same at the request of the State Attorney General. The court did this, notwithstanding that it had earlier denied the Petition for Post-Conviction Relief, which Petition merely attacked the alleged excessiveness of the sentence that had been previously imposed upon Cantoni (See Addendum at A18—A19).

Furthermore, it was the same Attorney General's Office which had resisted bail for Cantoni, which had called Cantoni "a threat to the community" (Addendum at A14) now was coming in, asking the court to release the same individual, knowing it was illegally doing so. The Assignment Judge, recognizing the legal infirmity in his action, proceeded nevertheless to grant the relief actually *sua sponte,* on his own motion, and on the bald assertion that it was near enough in time to the Petition for Post-Conviction Relief (See Addendum at A10). Helfant's pampered accuser thus was the beneficiary of a judicial quoit which incidentally was illegally cast out.

In addition, the illegality of the entire proceeding is further framed by *R.* 3:22-3. This rule holds, as here applicable, that a petition for post conviction relief "is not, however, a substitute or appeal from conviction or for motion incident to the proceedings in the trial court and may not be filed while such appellate court review is available." While illegal sentences may be the subject of an appeal alleged excessive sentences within legal limitations are not, and such sentences are ordinarily remedial only by direct appeal, pursuant to *R.* 2:10-3. *State v. Pierce,* 115 N.J. Super. 346 (App. Div. 1971), *cert. den.* 59 N.J. 369 (1971); *State v. Clark,* 65 N.J. 424 (1974). Thus, not only were the proceedings illegal for being out of time, but the entire proceeding was indirect contravention of the rules of court and the applicable case law.

As a result of this illegal and untimely "motion," this "threat to the community" (Cantoni) was released outright and forthwith, the court being "willing to do whatever was necessary to accomplish his immediate discharge, especially on the recommendation of the State" (Addendum at A13).[1] Thus, the sordid episode was acted out jointly by the judiciary and the Attorney General's Office, assisted by the Atlantic County Prosecutor. If this does not bespeak bad faith in the manner of Helfant's prosecution, then nothing does. *See United States ex rel Birnbaum v. Dolan,* 452 F.2d 1078 (3d Cir. 1971). Helfant has alleged bad faith in his complaint and what's more the complaint bespeaks it despite this Court's finding to the contrary.

The court, the Attorney General, and the Atlantic County Prosecutor's Office, all acted illegally in currying favor with the convicted felon who had agreed to cooperate against Helfant in the future as he had in the past. *Quere:* Is this not a judicial bribe participated in by the Attorney General and the New Jersey Courts.

This Court, in its opinion in this matter, said that it could not be assumed that no trial judge in New Jersey would be capable of impartially deciding Helfant's case simply because of the alleged previous involvement of members of the New Jersey Supreme Court (Slip opinion at page 9). Yet, is not the Cantoni matter a prime example of the fallability of this assumption? In that same proceeding, the trial court stated, with reference to Helfant's federal litigation which was then undecided before the Supreme Court of the United States:[2]

1. The quoted transcript, a part of the Addenda hereto, was not received by counsel for Helfant until April 25, 1975. There had been due diligence in counsel's efforts to obtain same, but, unfortunately, it was not received until the matter had already been argued in this Court.

2. Although the hearing was held on March 10, 1975, the last order was not filed until March 23, and the transcript was not received, although timely ordered, until April 25, 1975.

> "THE COURT: I read the record and I think it will go to trial. I might say that there is no question in my mind that they will reverse it. I really do feel that way. I just do not understand the decision that was handed down but I may be wrong" (Addendum at A5).

Here, again, we have the Assignment Judge expressing his opinion on the merits of Helfant's federal litigation in a separate proceeding that was being handled illegally to help a convicted felon to assure his cooperation against Helfant.

Under *Rule* 12(b)(6) of the Federal Rules of Civil Procedure, all inferences were to have been resolved in favor of Helfant and, all of the facts alleged in his complaint were to be considered as true. How can this Court assume as a fact that some trial judge in New Jersey would be capable of impartially deciding Helfant's case? Is this not a matter for proof in the District Court? Furthermore, does not this assumption dissolve in the light of what has now been brought forth to this Court regarding the Cantoni matter? Is it the responsibility of Helfant to find an impartial judge? Certainly, this cannot be the import of the Court's decision. In addition, this is not the situation as defendants don't pick their judges; they are assigned by the Assignment Judges who are in turn designated by the Chief Justice. *R.* 1:33-1 and *R.* 1:33-3.

This is a tainted prosecution, irretrievably stained by the taint of the prior involvement of the New Jersey Supreme Court and the Attorney General's Office. This Court should, for this reason, grant the Petition for Rehearing to allow Helfant to prove the contentions of his complaint, or more simply to make the federal defendants now come forward and rebut them. Simply, this Court may not, and cannot, take upon itself assumptions based

upon facts that are not in the record nor which the State have never sought to prove.

This Court should grant the Petition for a second reason. This Court has concluded that Helfant's case did not present "extraordinary circumstances" under *Younger v. Harris*, 401 U.S. 37 (1971). As the early analysts of this case have recognized, this Court based its decision upon the apparent right to Helfant to disqualify any judge who was susceptible to pressure from the New Jersey Supreme Court, and upon the alleged "duty" of any judge to disqualify himself should his sitting present even the appearance of bias. *See*, 43 U.S.L.W. 1165-66 (Apr. 29, 1975). Insofar as the Court's opinion was bottomed upon its reading of the New Jersey Court Rules, it is in error. *See*, *Kugler v. Helfant* (Slip opinion at 9-11). This will be amply demonstrated below.

Rule 1:12-1 places the burden of a judge of any court to disqualify himself on his own motion in any matter if he "(e) is interested in the event of the action; or (f) where there is any other reason which might preclude a fair and unbiased hearing and judgment or which might reasonably lead counsel or the parties to believe so." Nothing in this Rule, contrary to the inferences raised in the Court's Opinion (Opin. at 10) *requires any* judge to disqualify himself. If he does not disqualify himself, there is nothing either counsel or his client may do. Thus, while this Court may say that disqualification is "mandatory" whenever there is any reason under the Rule for the judge to do so (*Ibid.*), it is not mandatory in the sense of any outside force being applied upon the particular judge. *Rule* 1:12-2 provides for disqualification on a party's motion, but, again, this is discretionary with the court. If the court believes to the contrary and refuses to disqualify itself, there is nothing that counsel or client can do to rem-

edy the situation. *See, e.g., State v. DeMaio,* 70 N.J.L. 220, 58 A. 173 (E. & A. 1904).

Thus, in short, there is no "right to disqualify any judge who is susceptible to pressure from the New Jersey Supreme Court." 43 U.S.L.W. at 1166.

Furthermore, which judge will ever admit to himself that he is influenced by the New Jersey Supreme Court? What are the realistic chances of Helfant's actually receiving the benefit of a disqualification from any judge in the State of New Jersey on this ground? Self-analysis simply cannot be nor should it be expected to be carried out in this situation; Sigmund Freud proved this many years ago. Self-analysis calls into play an analytical procedure which, at the very best, is inadequate to serve the precepts of due process of law. Also, it must not be forgotten that under *R.* 1:12-3, if a judge disqualifies himself, the Chief Justice or the Assignment Judge assigns a different judge to sit in his place. The existence of this procedure is not a guard to violations of due process. *R.* 2:13-2 also is of no help since it is the presiding Judge of the New Jersey Supreme Court who must temporarily assign judges to substitute for justices of the New Jersey Supreme Court who might not be able to act. It must be remembered that two Justices, Mountain and Sullivan, who were named in Helfant's federal complaint, remain current members of the Court. A third judge (Conford) who temporarily sat now has resumed his position on the Appellate Court. Thus, there is an extraordinarily pressing need for federal equitable relief in Helfant's case. The influence of the prior Chief Justice, named as defendant in the federal suit, remains, notwithstanding this Court's willingness to believe otherwise. *See, Kugler v. Helfant,* (Slip Opinion at 11, footnote 7). The former Chief Justice played an active

role in the appointment of Justice Sidney Schreiber, his former partner, who was recently appointed to the New Jersey Supreme Court. His influence remains pervasive in the New Jersey Court System. There is every reason to assume that current judges remain under the influence of his person or at the very least of his former position. If anything, it is not for this Court to make assumptions and inferences against Helfant which should be a matter for proof in the District Court. (*See* Addendum at A17.)

It was also indicated by Justice Brennan during oral argument on the matter, that meetings with judges, similar to that which had taken place in this case, had occurred while he was a member of the New Jersey Supreme Court. This statement may well have misled this Court. Justice Brennan was elevated to the Supreme Court of the United States on October 15, 1956. The State Grand Jury Act of New Jersey was passed on December 31, 1968 as Chapter 361 of the Laws of 1968. This law established a statewide grand jury presided over by the Attorney General, or his deputies. *See, N.J.S.A.* 2A:73A-1 *et seq.* Therefore, while Justice Brennan was a member of the New Jersey Supreme Court, there could not have occurred a similar situation as that involving Helfant. At that time, there would have been no State Grand Jury presided over by the Attorney General convening down the hall from the conference chambers of the New Jersey Supreme Court. Obviously, then, the Attorney General could not have made available to the New Jersey Supreme Court a transcript of proceedings of a grand jury still in session. The creation of the State Grand Jury had brought the Attorney General into the picture, whereas under ordinary circumstances, Helfant's case would have gone before the Atlantic County grand jury and been presided over by the Atlantic County Prosecutor. *See, N.J.S.A.* 2A:72-1 *et seq.*; 2A:73-1 *et seq.* *See also, R.* 3:6-1 *et seq.*

The venue for Helfant's trial has been set in Mercer County, 90 miles from his home, by the Mercer County Assignment Judge, who operated under the statute setting up the New Jersey State Grand Jury, *N.J.S.A.* 2A:73A-1, *et seq.*, particularly *N.J.S.A.* 2A:73A-2. The Assignment Judge of Mercer County was appointed by the Chief Justice of the New Jersey Supreme Court. Therefore, the Supreme Court, in essence, has fixed the venue of Helfant's trial through its appointee. Motions to change this venue have been made before the appropriate judge in Mercer County. Application for leave to appeal to the appellate court has also been denied, so that Helfant has absolutely no control over either the venue of his trial or the judge who will preside over the trial.

Thus, this situation was a unique one which could not have taken place during Justice Brennan's tenure in the New Jersey Supreme Court. A rehearing should be granted to restate, redefine and illuminate this point.

Lastly, at the time of the oral argument of this case, Deputy Attorney General David Baime, appearing for defendants, indicated that the purpose of the meeting with Helfant was to ascertain whether or not removal or disciplinary proceedings should be instituted against Helfant. This was his third different reason so advanced. On page 14 of the State's brief, it is indicated that the purpose of the meeting was to discuss with judges Moore and Helfant whether they should sit pending resolution of the grand jury investigation. On page 26 of the Brief, the defendants stated that the New Jersey Supreme Court's inquiry was to discuss whether Helfant and Moore should sit as Judges during the pendency of the grand jury investigation.

Under the statutes of the State of New Jersey, the New Jersey Supreme Court can suspend a judge from of-

fice pending the determination of any proceedings against him. *N.J.S.A.* 2A:1B-5. Any hearing to finally remove the judge from office cannot be held, however, before the independent civil, criminal or administrative action is finally decided in a tribunal in which the judge has the opportunity to prepare his defense and is entitled to representation by counsel. *N.J.S.A.* 2A:1B-10. The Attorney General, therefore, has offered three different reasons for the meeting, none of which is supported by the record, and none of which stands up in light of the applicable statutes and proceedings. If disciplinary proceedings were involved in Helfant's case, there are statutes and rules which afford the rudimentary concepts of due process which were not met in this instance. Although this Court says that the complaint does not bespeak bad faith, the complaint filed in this case alleges bad faith and is replete with bad faith in its allegations. Bad faith appears in the record when the illegal activities of the Attorney General and the Supreme Court are actually realized.

CONCLUSION

For all the above reasons, the Petition for Rehearing should be granted, and this matter should be remanded for a full hearing in a District Court consistent with the opinion of this Court.

Respectfully submitted,

/s/ Marvin D. Perskie
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CERTIFICATE OF COUNSEL

Pursuant to *Rule* 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of *Rule* 58.

By: /s/ Marvin D. Perskie
MARVIN D. PERSKIE

ADDENDUM

Letter to Marvin D. Perskie from Carl Valore, Atlantic County Clerk dated May 2, 1975

Marvin Perskie, Esq.,
3311 New Jersey Ave.,
Wildwood, N. J.

Dear Mr. Perskie:

In accordance with our telephone conversation today in reference to John Cantoni; he filed application for Post Conviction Relief on December 17, 1974 and application was denied on January 31, 1975. On March 10, 1975 Motion for reconsideration of sentence was granted and on March 13, 1975 and April 8, 1975 Court Orders were filed granting reconsideration of sentence.

Yours very truly
/s/ Carl Valore
CARL VALORE
County Clerk.

CV:bd

Order Granting Reconsideration of Sentence of John Cantoni dated March 12, 1975

This matter having been opened to the Court by Edward G. Goldstein, attorney for defendant, John Cantoni, on Monday, March 10, 1975, before the Honorable Herbert Horn, and in the presence of Solomon Forman, First Assistant Atlantic County Prosecutor, appearing for the State of New Jersey, on an application made by the defendant for an Order permitting a Reconsideration of Sentence; and the Court having considered the arguments of counsel;

IT IS on this 12th day of March, 1975, ORDERED that the defendant's Motion for a Reconsideration of Sentence be granted and that the sentence received by the defendant of six to nine years in State Prison (as modified by the Appellate Court on November 26, 1973) consecutive with a sentence of three to five years in State Prison of March 27, 1972 be vacated and in its place defendant be sentenced to a term of four to four and one-half years in State Prison concurrent and retroactive to the three to five years sentence of March 27, 1972.

/s/ Herbert Horn
HERBERT HORN, A.J.S.A.

I hereby consent to the entry and form of this Order.

/s/ Solomon Forman
SOLOMON FORMAN, Esquire
1st Ass't Atlantic County Prosecutor and on behalf of and for the Attorney General of New Jersey

Order Granting Reconsideration of Sentence of John Cantoni dated March 20, 1975

This matter having been opened to the Court by Edward G. Goldstein, attorney for defendant, John Cantoni, on Monday, March 10, 1975, before the Honorable Herbert Horn, and in the presence of Solomon Forman, First Assistant Atlantic County Prosecutor, appearing for the State of New Jersey, on an application made by the defendant for an Order permitting a Reconsideration of Sentence; and the Court having considered the arguments of counsel;

IT IS on this 20th day of March, 1975, ORDERED that the defendant's Motion for a Reconsideration of Sentence be granted and that the sentence received by the defendant of three to five years in State Prison on March 27, 1972, be modified to a term of three to four and one-half years in State Prison, and that the sentence received by the defendant of six to nine years in State Prison (as modified by the Appellate Court on November 26, 1973) consecutive with the aforesaid modified sentence be vacated and in it's place defendant be sentenced to a term of four to four and one-half years in State Prison concurrent and retroactive to the three to four and one-half years sentence of March 27, 1972.

/s/ Herbert Horn
HERBERT HORN, A.J.S.C.

I hereby consent to the entry and form of this Order.

/s/ Solomon Forman
SOLOMON FORMAN, Esquire
1st Ass't Atlantic County
Prosecutor

Testimony of Motion on Reconsideration of Sentence of John Cantoni dated March 10, 1975

(2) (The following proceedings take place, Solomon Forman, Assistant County Prosecutor, not being present:)

MR. FOLEY: Your Honor, perhaps the only reason I am present—well, let me state this: The State has no objection to this application and I am present, Your Honor, simply to underline our interest in this particular matter.

Let me say that Mr. Cantoni has been of great assistance to the State of New Jersey in an investigation which was extremely sensitive, and I think because of its nature that perhaps I should not detail it for the record.

THE COURT: I have a letter which indicates that it was.

MR. FOLEY: The only reason for my presence is to underline the interest of the State in this petitioner, and that we do feel he has served a considerable period of time. I believe he has been incarcerated now for 40 months which is something over three years.

On information and belief I think the record in the institution of this gentleman is good. He is in Leesburg, not maximum security, a maximum security institution.

(3) We do have every reason to anticipate continued cooperation in the matter which was outlined to the Court in the letter.

We do feel, Judge, there was at the time that Mr. Cantoni originally was spoken to, there was indication that the State would attempt to do everything possible to help him, and, of course, the matter in which he has been so helpful has been delayed inordinately not for any reason to do with him but because of certain legal man-

euvering, and at this time the case is presently before the Supreme Court of the United States. It may be many, many months before it is resolved and I do not know how it will be resolved.

THE COURT: As I understand it it will be argued on the 28th of this month.

MR. FOLEY: Yes, that is what I understood. But I would think that probably we would not have a decision out of the Supreme Court until the fall, but I do have every reason to believe, I have every confidence in his continued cooperation if and when that case does go to trial, and depending upon the decision of the Supreme Court it may still (4) never go to trial.

THE COURT: I read the record and I think it will go to trial. I might say that there is no question in my mind that they will reverse it. I really do feel that way. I just do not understand the decision that was handed down but I may be wrong.

MR. FOLEY: Well, the State shares your optimism and we hope it will, too.

But actually the only reason for me to be here this morning is to outline our interest in the matter. I wonder if you would allow me to be excused at this time?

THE COURT: I appreciate your coming down. I think it emphasizes the State's interest, and I will take that into consideration.

MR. FOLEY: Thank you very much.

I want to tell you that Sergeant William Sullivan of the New Jersey State Police is also here in Court this morning. I might tell you that he knows even more about this particular matter than I do. If you want to hear Officer

Sullivan, hear his testimony, or speak to him either in Court or in chambers he (5) will be available.

THE COURT: I do not think it is necessary because I think what you have stated in the letter as well as what you have stated orally makes it abundantly clear as to your feelings, and I do not see any need to go into it in detail.

MR. FOLEY: Thank you very much. I appreciate your courtesies that have been extended.

THE COURT: Supposing we wait for the arrival of Mr. Forman who will be here momentarily and then we can arrive and make a decision very quickly.

(Pursuant to direction of Court the Court Reporter inserts into the record the following letter:

"Honorable Herbert Horn

"615 Guarantee Trust Building

"Atlantic City, New Jersey 14801

"Re: State vs. John S. Cantoni

"Dear Judge Horn:

"It is my understanding that John S. Cantoni who is presently an inmate in the New Jersey State Prison at Leesburg has a (6) postconviction relief application pending before Your Honor.

"I would respectfully like to call to the Court's attention the fact that John Cantoni has been extremely helpful to the New Jersey State Police and to the Division of Criminal Justice. Mr. Cantoni has supplied us with information concerning the rather sensitive situation and testified before the State Grand Jury with regard to this

information. As a result, a multi-county indictment was returned against two Atlantic County Municipal Court Judges (Judges Edward Helfant and Samuel Moore) concerning an obstruction of justice.

"The Attorney General's Office advised John Cantoni that a recommendation of leniency would be made to the sentencing Judge for his cooperation. The matter of State vs. Helfant and Moore has been delayed due to various defense motions which have brought the matter into the Federal jurisdiction. The case is now pending before the United States Supreme Court and a very lengthy delay is anticipated. As a result, Mr. Cantoni is out of time with regard to the rules regulating resentencing. (7) Mr. Cantoni has cooperated and I believe he will continue to cooperate by testifying at the time of trial. The foregoing is being brought to Your Honor's attention for any consideration that the Court may see fit to give to John Cantoni in his present application."

Many thanks for your consideration.

"Respectfully,

s/s David J. Foley
Deputy Attorney General.")

(Recess taken.)

(The following proceedings take place after Mr. Foley has departed from the courtroom; and Solomon Forman, Assistant County Prosecutor, is present:)

THE COURT: Mr. Forman, as you know Mr. Foley was here previously and I understand you have been alerted to that fact.

MR. FORMAN: Yes. I have been told, Your Honor, that Mr. Foley addressed the Court and he indicated the

position of the Office of the Attorney General with respect to the matter of John Cantoni.

I am not sure as to what he said in the letter but I am generally aware of the fact (8) that Mr. Foley from the Attorney General's Office whose case this is, by the way, requested that the Court review and reconsider the sentence of Mr. Cantoni, and because of the assistance that he has furnished the State of New Jersey, they feel this should be done. The Attorney General's Office and Mr. Foley request that the Court consider the releasing of Mr. Cantoni.

Your Honor, I am here only as an arm of the Attorney General's Office, and I would have indicated to the Court the same position that Mr. Foley took; namely, the release of this defendant and we do urge the Court to release Mr. Cantoni based on the services that he has performed for the Attorney General and for the furtherance of justice and assistance that he gave the Criminal Justice Department in its problem with law enforcement in the State of New Jersey.

There is one problem that does require some review, and that is this: Was this application made within time?

I believe, Your Honor, that the application was made so much within time or so close (9) to being within time under the interpretation of the rule that it should be considered as if it had been made within time.

THE COURT: Well, it is not a question of the application. The rule says that the Court may act within 35 days after judgment of the Appellate Court if the Appellate Court's judgment can be considered as the United States Supreme Court in the denial of certification, certiorari, and then it comes within the 35 days. The motion must be made within that time.

MR. FORMAN: Let me try to discuss this matter with you. I do not know the history behind the wording and as to this rule, as the rule does now exist; but I know from the Criminal Practice Committee that there are indications that the rule does and was intended—the rule as it presently does exist and as it was intended to cover the appeals to the Appellate Courts, and I am talking about the 35-day portion, the Appellate Court, the New Jersey Supreme Court, and to, of course, the appeals or an appeal in the Federal system, I know about all of that and how it applies.

(10) While the rule is not that clear, it would seem to cover the fact that there is a limited period of time to review or to reconsider a sentence from the time of the last Appellate review by any Appellate Court.

Whether or not it was intended—I have to go back—whether it was intended to accomplish that result by extending the period of time for reconsideration of the sentence or not I do not know; but the fact is that it falls within the wording as presently written, that there is the opportunity in the trial Court to review and reconsider a sentence within a certain number of days after any Appellate review.

I believe now that the Supreme Court Rules Committee has realized there is something that is not clear about this rule; and now the Committee is attempting to eliminate the verbiage under the present rule or make it more clear as to what the postition of the Court should be as to whether or not the period of time extends beyond the Appellate review in the Courts of New Jersey or whether it is only limited to direct appeal within the Courts; or whether it (11) is intended to accomplish any review outside of the Courts of New Jersey.

So that the Committee is either going to clear that up, change the language so that it becomes clear as to what was intended; or the Committee is just going to recommend the abrogation of the rule and substitute entirely a new rule indicating that the Court may at any time for good cause reconsider a sentence.

So that I say that the application that was made here appears to fall within the wording of the rule as we presently have it.

Therefore, for that reason I say that the application is now within the power of the Court to reconsider the sentence.

For the reasons expressed by Mr. Foley, and as I generally indicated them to you, that a review of the sentence should be made and should be considered by the Court.

THE COURT: I am satisfied, although I am not entirely certain, that the Court could have relaxed the rule, and I am satisfied that the proper interpretation of the rule is that the Court does have jurisdiction at the present time and, consequently, will entertain the (12) application.

The question here is what in the way or in the nature of a reconsideration should be done, what reduction is warranted. I am told that the defendant is presently serving two consecutive sentences.

MR. GOLDSTEIN: Three to five and six to nine.

THE COURT: Were they both imposed at the same time?

MR. GOLDSTEIN: He served the three to five when he went to trial, the first sentencing. It would only be involving the six to nine sentence.

THE COURT: What does the defendant request?

MR. GOLDSTEIN: Your Honor, the defendant would request any consideration that the Court can so indicate. I mean I do not feel I could stand in front of you and say, Please change the six to nine to a two to three consecutive or instead of making it six to nine let it run concurrently, I do not know what to tell the Court.

The only thing I can say is that the (13) defendant would appreciate any reduction that he can receive from the Court and we will leave it to the Court's discretion.

MR. FORMAN: I have nothing else to say. I do have Detective Sullivan here with me and I want to make sure that he has nothing to say to the Court.

(Mr. Forman and Detective Sullivan confer.)

MR. FORMAN: Your Honor, he indicates he has nothing further to offer. We feel that the matter has been put before you fairly and we feel there is nothing further. He has nothing further to say to the Court.

THE COURT: Supposing we reduce the sentence, the six to nine is it, by half, what about that? What do you think about that?

(Mr. Forman and Detective Sullivan confer.)

MR. FORMAN: I have conferred with Detective Sullivan. I realize that is not to be a final disposition in the matter. Let me try to get this straight in my own mind. On June 26, 1972 Cantoni was sentenced to six to nine years consecutive to March, 1972, as to (14) that sentence, is that correct?

He also has a four to five—

MR. GOLDSTEIN: Pardon me. The Appellate Court reversed that and made it six to nine.

MR. FORMAN: As to the six to nine, if the six to nine or half of the six to nine that has been mentioned, if that does not result in his immediate release, then I—well, just a moment. I support this would be subject to the Parole Board's action.

What I do not want to have happen is to have the six to nine added on to his other sentence.

If you finally decide on half of the six to nine sentence, and the matter then goes before a Parole Board—

THE COURT: Excuse me. Are you recommending that he be discharged immediately?

MR. FORMAN: I have not said that.

THE COURT: But I am trying to find out.

MR. FORMAN: If you are asking me, Your Honor, I can say that based on my conversation with the Office of the Attorney General, and based upon the help that he has given them, the Attorney General's Office would be grateful (15) if he were discharged immediately.

THE COURT: I will enter such an order. I will order that be done. You can work it out.

MR. FORMAN: Suppose we come back after lunch, all right?

THE COURT: Fair enough.

MR. GOLDSTEIN: Thank you very much.

THE COURT: The record should show that the Court is convinced that this man's aid to the State is of sufficient value that it not only shows rehabilitation on his part but also shows the necessary ingredient to require the Court to give this consideration.

I am also taking into consideration that he has already been incarcerated for a term of 40 months. It seeems to me that that is an extensive period of time on any charge, let alone the charges that we have involved here and for which he was convicted.

For these reasons I am willing to do whatever is necessary to accomplish his immediate discharge, especially on the recommendation of the State.

Thank you very much.

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(16) (The hearing was closed.)

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I, JOHN F. SCARBOROUGH, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, certify the foregoing to be a true and correct transcript of my stenographic notes.

/s/ John F. Scarborough
JOHN F. SCARBOROUGH

Dated: April 24, 1975

Transcript of Bail Continuance Hearing of John Cantoni

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(8) It is the position of the State that the defendant poses a threat to the safety of the people of this community. He should not be continued on bail pending sentencing. He should be immediately placed in incarceration.

THE COURT: I will hear you, Mr. Garber.

MR. GARBER: If the Court please, your Honor, what the defendant pleaded guilty to, and this story about plague, is of no consequence.

I think what the Court is interested in is whether this man will appear here for sentencing.

Previously, I am sure the Court is aware that there was a murder case, where this man's life was threatened, his family's life, his business, and yet he appeared here day after day in that murder case involving the police officer.

All his life, forty-six years, he has never been convicted of any crime.

Now, he has a wife, he has three children, he has a business. He has lived here many, many years, and there is no reason for this Court to believe, after he has appeared here at every single meeting, and been at Hammonton at every single discovery day, that he would not appear here on June 19th to be sentenced by this Court.

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(10) MR. HAYDEN: The mere fact, your Honor, that the defendant entered a plea to conspiracy to distribute Controlled Dangerous Substance per se should establish as a matter of law he presents a threat to the safety of the community.

I recently had a wiretap case in North Jersey involving individuals stealing heavy equipment, and it involved an extortion.

After their conviction, I immediately revoked bail. The Appellate Division affirmed revocation of bail.

At the time, the only thing I relied upon were the facts in the Indictment, no affidavits, nothing else.

I argued before the Appellate Division the facts of the Indictment to which the defendants pleaded would establish that they presented a threat to the safety of the community, in which case I think it follows a fortiori, because I maintain that narcotics are the greatest single menace which is plaguing this area right now, and anybody that is involved in them should not be allowed time for the convenience of cleaning up their business affairs or something else. The problem is too great.

MR. GARBER: Your Honor, the Attorney General says

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(12) THE COURT: Well, the Attorney General is going a step further. He is going beyond that. I don't think the Attorney General has said anything about the fact that he feared the man wouldn't be here on the 19th.

MR. GARBER: But, if the only purpose of bail is to secure a man's appearance, not to take him off the street —now, you feel, your Honor, I am sure, that he will be here on June 19th. The Attorney General also feels he will be here on June 19th.

Do you want to put aside the purpose of bail?

THE COURT: Not necessarily. That is not so.

MR. GARBER: Put aside his property to take care of his family?

There has been no allegation that he is still involved. If the Attorney General has any information that he is still involved in narcotics, let's hear it now.

MR. HAYDEN: As your Honor knows, the sole purpose of bail after a conviction—a conviction is at the time of plea—is not solely to insure the appearance. The purpose of bail, among other things, is to insure that somebody does not possess a threat to the community. (13) We are talking about that, also.

I think there are three grounds for bail pending appeal. One is appearance; one is a threat to the community; and third, an appeal is taken on insubstantial grounds.

Here, we are not talking about an appeal, but the same logic—

MR. GARBER: Your Honor, other defendants pleaded guilty. Why isn't their bail revoked? They were in the same Indictment, charged with the same Counts, and some of them charged with more Counts, yet their bail hasn't been taken back.

I think he is entitled to be treated as fairly as the others.

MR. HAYDEN: Your Honor, this is obviously a case where the Court is going to be called upon to balance the interest of the public as opposed to the interest of the individual, and in this case, on the basis of the defendant's role in the conspiracy, and the Count to which he pleaded, we maintain the Court should strike the balance of favor in the interest of the public, regardless of any inconvenience it may cause the defendant Kravitz.

THE COURT: Anything further, Gentlemen?
MR. GARBER: No, your Honor.

Newspaper article dated January 23, 1975

PHILADELPHIA INQUIRER,
JANUARY 23, 1975
JUSTICE HALL TO RETIRE

Associated Press

TRENTON—Justice Frederick W. Hall plans to leave the New Jersey Supreme Court in March, the Associated Press had learned.

Hall, according to judicial sources, plans to step down from the bench March 10, his 16th anniversay on the state's highest court.

Justice Nathan L. Jacobs is leaving the Supreme Court Feb. 28, when he reaches the mandatory age of 70.

Hall will be 67 Feb. 22. He could stay on the court until age 70, but he said he had decided to retire "entirely for personal reasons."

"I've been a judge for 21 years. I think that's enough," he added. "The workload has become increasingly heavy. It's a seven-days-a-week job."

Hall is a Democrat. Presumably, Gov. Brendan T. Byrne will nominate a Democrat to replace him. The court normally has a party breakdown of 4 and 3, with the party in control of the governor's office having the majority.

Byrne, a Democrat, nominated Sidney Schreiber, a Republican, to succeed Jacobs, also a Republican. Schreiber was a law partner of former Chief Justice Joseph Weintraub.

Weintraub headed a committe appointed by Byrne to screen nominees for the seat being vacated by Jacobs. It was not certain whether a similar procedure would be used to select Hall's successor.

A Petition for Post-Conviction Relief of John Cantoni

1. Petitioner was charged with the offense(s) of CONSPIRACY TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE–CONSPIRACY TO POSSESS SAME–POSSESSION OF SAME on indictment(s) (accusation(s) number(s) UNKNOWN dated
in the County of STATE GRAND JURY.

2. Petitioner was convicted of the crime of AS STATED ABOVE and on date of March 28, 1972 was sentenced by Judge RIMM to 6-9 on Cnt. #1; 4-5 on cnt. #2; 2-4 & 3-5 Concurrent and consecutive to ct. 1 & 2 Total of 9-14 yrs.

3. [Indicate whether you appealed your conviction to the Appellate Division, Supreme Court, or both. Attach copies of any court opinions decided in your appeal. If you did not appeal your conviction, write "No appeal."]–Appealed conviction and was denied certification by U.S. Supreme Court–

4. [Indicate whether you have had any previous post-conviction proceedings involving this conviction. Give the dates of each, the type of claims you made in each. Indicate whether you appealed the denial of any of your applications and give the disposition of those appeals. Attach copies of any court opinions involving your applications.]–No

5. [Indicate whether you were represented by an attorney in any of the proceedings listed under numbers 3 and 4. Give each attorney's name and state whether he was from the Office of the Public Defender or was retained by you or assigned by the court.]–No

6. a. Petitioner desires to have counsel appointed by the court

7. Petitioner is presently confined in ~~Leesburg~~ State Prison Farm

8. [State the facts on which your claim is based, the legal grounds of your complaint, and the particular relief you seek. Use extra paper if you need it. *NOTE:* DO NOT INCLUDE LEGAL ARGUMENTS, CITATIONS AND DISCUSSIONS OF AUTHORITIES IN THIS PETITION. *You may submit them only in a separate memorandum of law.*]—Excessive and Harsh Sentencing

State of New Jersey :
:ss.
County of Cumberland :

John S. Cantoni, being duly sworn according to law upon his (her) oath, deposes and says:

1. I am the petitioner in the above-entitled action.

2. I have read the foregoing petition and know the contents thereof and the same are true to my own knowledge, except as to matters therein stated to be alleged as to persons other than myself, and, as to those matters I believe it to be true.

3. In making this affidavit I am aware that false swearing is a misdemeanor and that the punishment for false swearing is a fine of not more than $1000 or imprisonment for not more than three years or both.

/s/ John S. Cantoni
JOHN S. CANTONI

NOTARIZED